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**August 21, 2020**

Honorable Kathy Kraninger  
Director  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

Docket No.: CFPB-2020-0019

Submitted Via: <http://www.regulations.gov/>

Dear Director Kraninger:

On behalf of the 1.4 million members of the National Association of REALTORS® (NAR), I thank you for the opportunity to comment on the new advisory opinion program (Proposed AO Program) that may offer careful review and needed transparency of intricate industry issues with specific consumer financial laws and regulations. The Consumer Financial Protection Bureau's focus on alleviating regulatory uncertainty to maximize industry compliance will deliver essential protections for consumers accessing vital financial products and services.

The National Association of REALTORS® is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,200 local associations or boards, and 54 state and territory associations of REALTORS®. NAR represents a wide variety of housing industry professionals, including approximately 25,000 licensed and certified appraisers, committed to the development and preservation of the nation's housing stock, along with its availability to the widest range of potential homebuyers.

The real estate industry is diverse – ranging from sophisticated large mortgage lenders with extensive compliance departments to self-employed real estate professionals with limited legal support. When the Bureau issues regulations and subsequent guidance, each business manages their obligations differently and may face their own unique challenges when it comes to compliance. As the Proposed AO Program is developed and the Pilot AO Program is implemented, there are several key issues to consider to ensure all businesses falling under the Bureau's jurisdiction are benefiting from a fair and transparent interpretive rule process.



The timeline for which an advisory opinion request will be responded to and reasons why a request may be denied should be clearly articulated to requesting parties. While the Bureau explains what information is necessary for a requestor to provide when seeking an AO, it remains to be seen what information the Bureau will provide in response to the request, whether and how a potential "denial" decision for an AO could be appealed, and when such responses will be shared with the requestor. Many different entities may be seeking to utilize the Proposed AO Program; thus, expectations should be clear from the beginning, especially the timeframes for action and any information necessary to ensure a thorough Bureau response. Additionally, more specific criteria for when an advisory opinion may be appropriate will benefit both the requesting entities and the Bureau prioritizing and sorting through the requests.

Proposed AO Program transparency and effective communication will be especially critical for those requestors with limited legal resources, such as small business owners and sole proprietors. Allowing third parties like an outside counsel or a trade association to submit a request for an AO on behalf of one or more clients or members will also help those smaller businesses better seek the purported benefits of the Proposed AO Program. Ensuring AOs are specifically tailored to that requesting entity will also reduce confusion among regulated entities, especially those lacking sophisticated compliance support.

Advisory opinions that can be legally relied upon will provide the most certainty and clarity for the regulated industry. Formal rulemaking procedures remain essential when it comes to regulatory modifications that impose legal liability. The Bureau therefore must ensure that the advisory opinions, which it deems as interpretive rules, do not conflict with those obligations of existing rules and statutes. As indicated in the Proposed AO Program, statutory safe harbors will be explained in the AOs and notice-and-comment procedures will still be utilized for rulemakings under the *Administrative Procedures Act*, which are critical distinctions for regulated entities.

With the Bureau having jurisdiction over many consumer financial protection laws, it is important for these advisory opinions to be prominently displayed online and communicated to ensure compliance notice across industries (subject to confidential withholdings). There are several areas of consumer financial regulation that could benefit from such additional Bureau guidance, especially as marketplace practices change in response to new judicial interpretations and changing business technology. The Bureau should consider the evolving legal and technological environments when developing AOs and also consider posting notices about AOs in the works that could offer regulated entities notice that useful and reliable interpretations are forthcoming.

NAR appreciates the goal of the Proposed AO Program to provide insight to enhance compliance for regulated entities so that they may better adjust to changing circumstances with current regulations and statutes. NAR looks forward to continuing to work with the Bureau on advancing regulatory certainty and protecting consumers engaging in lifechanging financial decisions, such as purchasing a home. If you have any questions on this comment, please contact Christie DeSanctis, NAR's Director of Conventional Finance and Business Policy, at 202.383.1102 or [CDesanctis@NAR.REALTOR](mailto:CDesanctis@NAR.REALTOR).

Sincerely



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2020 President, National Association of REALTORS®